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INFLUENCE OF THE BAR  
IN  
OUR STATE AND FEDERAL  
GOVERNMENT.

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ANNUAL ADDRESS  
BEFORE  
THE SOUTHERN NEW HAMPSHIRE BAR  
ASSOCIATION,

FEB. 23, 1894,

By J. H. BENTON, JR.

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BOSTON:  
1894.



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“ I hold every man a debtor to his profession : from the which as men of course do seek to receive countenance and profit, so ought they of duty to endeavour themselves by way of amends to be a help and ornament thereunto.”

BACON — MAXIMS OF THE LAW.

MR. PRESIDENT AND GENTLEMEN OF THE ASSOCIATION :

If I were to address the Bar of a State where fifty years of legislative attempts to substitute a purely statutory code of procedure for the forms and methods of the common law had resulted in absolute failure ; where constant experiments to replace the rules of the common law had so complicated its laws that the decisions of its courts are rapidly becoming mainly constructions of constantly changing statutes : and where the rule of admission to the Bar had become so lax as to invite stringent legislative regulation, I might follow the example of the president of the New York Bar Association at its recent annual meeting, and speak upon the importance of “ Law Reform.”

But in this State the discussion of such a subject is, happily, unnecessary ; for here a simple and effective code of procedure has been developed from the forms and methods of the common law with but little aid from legislation, while the statutes, as embodied in your recent admirable compilation, have been designed not so much to change as to supplement and apply the principles of the common law. And the Bar has enforced a standard of admission to its membership so excellent as to leave no need of legislation for that purpose.



The graphic sketches of the deceased members of your Bar, which have just brought to us afresh the grace and the strength of their author, render it presumptuous to attempt a monograph upon any one of the many illustrious members of our profession who have adorned the annals of your State.

I have, therefore, sought to bring some small contribution to an old subject, and shall speak upon

#### THE INFLUENCE OF THE BAR IN OUR STATE AND FEDERAL GOVERNMENT.

To fully understand this we must keep closely in mind the primary principle upon which this government is based, and from which it has been developed, which is, that, subject only to written constitutions, all political power resides in the majority of the people, without qualification of property or knowledge. So carefully is this power preserved that the constitutions of twenty-three states expressly declare that the enumeration of rights therein shall not be construed to impair or deny others, which are retained by the people.

Unrestrained, unqualified "manhood suffrage" is the basis of our government, and every possible constitutional provision has been made to secure and protect it, and to give it ample force and effect.

The right of suffrage is by the constitutions of all the states given to every male citizen of twenty-one years of age, of sound mind, who has not been convicted of infamous crime, with varying but very slight conditions as to residence, with no substantial property qualification; and practically without educational qualification of any kind. In Connecticut the



voter must be able to read the constitution and statutes of the State. In Massachusetts he must be able to read the constitution and write his name. In Mississippi he must be able to read any section of the constitution or to understand the same when read to him or give a reasonable interpretation of it. In Alabama all educational qualifications are expressly forbidden by the constitution. In nearly all the states a pauper who can neither read nor write has the same right of suffrage as the best educated and most wealthy citizen.

With this unlimited right to vote there is also the unlimited right of speech and publication. Twenty-eight states have express constitutional provisions giving the right to speak, write, and publish on all subjects.

Not only legislative but nearly all executive and judicial officers are chosen by popular vote. The governor, and all of the more important executive officers of all the states, and the judges of the higher as well as of the inferior courts in most states are elected by popular vote. In a few they are elected by the Legislature, and in a still smaller number they are appointed by the Executive and confirmed by the Senate or a Council.

The President of the United States is now practically chosen by popular vote of the states, the Electoral College having become only a machine to register the vote of the people of each state, and there seems to be danger that the Senate of the United States may also come to be chosen by popular vote of the states.

In most states the tenure of the judges, even of the highest courts, is limited to a more or less brief term of years. In many of the states the judges may be removed by the governor upon the request of the Legislature, and in all of the

states they may be practically removed from office by the abolition of the particular court of which they are judges. Even the Supreme Court of the United States can be changed by adding to its numbers.

And that this unrestrained power of the people may have the widest scope, there is practically no qualification of property or knowledge required for either legislative, executive, or, in most cases, judicial office in state or nation. Several of the state constitutions expressly provide that no property qualification shall be required, and the constitution of Alabama provides that no educational qualification shall be required for any office. In most of the states there is no constitutional qualification required for even the highest judicial office. In Minnesota, Missouri, Arkansas, Colorado, Alabama, and Louisiana, the judges of the highest court are required to be "learned in the law"; in Maryland they are "to be selected from those who have been admitted to practise law and who are most distinguished for integrity, law, and sound legal knowledge"; in Virginia they must have held a judicial situation under the United States, or have practised law five years: in Texas and Georgia, they must have practised law or held a judicial position in a court of record for seven years: in Kentucky and Arkansas for eight years: in Louisiana for ten years: in Colorado and Florida they must have been admitted to practise in the Supreme Court of the State.

The ultimate danger to the security of life and property under such a system of government is apparent. It is safe to say that no student of history believed at the time the Republic was formed that any government thus subject to the practically uncontrolled power of the people by popular vote could long continue.

The wisest of the framers of the federal and State constitutions had serious doubts as to this, and evidently felt that as the country grew in wealth, and social and pecuniary disparity of condition increased, greater safeguards for the security of life and property would be required.

Their fears would have been greater if they had anticipated our marvellous material growth and development. The most wonderful thing in all political history is that a nation of nearly seventy million people, with enormous wealth, great cities, increasing inequality of pecuniary and social condition, and a population composed of the most diverse elements, should have been safely developed under such an absolutely popular form of government.<sup>1</sup>

It is familiar history that Hamilton, Morris, and others of the more conservative framers of the Federal Constitution had grave misgivings on this subject, and sought, though with comparatively little success, to introduce into the Constitution safeguards against the results which they expected would follow from the uncontrolled power of unlimited popular suffrage. Even Jefferson, the most ardent of Democrats, and the most hopeful statesman of his time, freely confessed his fear of the ultimate tyranny of the majority through the legislative branch of the government.

That distrust of the power of our government to protect persons and property with increase of territory, of population, and of wealth, which these statesmen then had, has always existed among thoughtful men, and the wisest stu-

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<sup>1</sup> We have received by immigration, since 1820, more than fifteen million inhabitants, and to-day it is safe to say that more than one third of our entire population is of foreign birth or immediate foreign parentage. More than one half of the population of Massachusetts is probably of foreign birth or immediate foreign parentage.

dents of history, reasoning from what has been the result of popular government elsewhere, have continued to confidently predict that our government must ultimately change to a stronger form, or the safeguards of life and property would be gradually destroyed.

Examples of this are numerous and familiar, notably that of Lord Macaulay, who in his famous letter, on the receipt of a copy of Randall's "Life of Jefferson" from the author, in 1857, wrote that while he was much obliged for the books, he could not "reckon Jefferson among the benefactors of mankind," because he had "long been convinced that institutions purely democratic must sooner or later destroy liberty or civilization, or both."

He stated his fears in the following language: —

"As long as you (the Americans) have a boundless extent of fertile and unoccupied land, your laboring population will be far more at ease than the laboring population of the Old World; and, while that is the case, the Jefferson politics may continue to exist without causing any fatal calamity. But the time will come when New England will be as thickly peopled as old England. Wages will be as low, and will fluctuate as much with you as with us. . . . Then your institutions will be fairly brought to the test. . . . It is quite plain that your Government will never be able to restrain a distressed and discontented majority. For with you the majority is the Government, and has the rich, who are always a minority, absolutely at its mercy. . . . I seriously apprehend that you will, in some such season of adversity as I have described, do things which will prevent prosperity from returning: that you will act like people who should in a year of scarcity devour all the seed corn, and thus make the next a year, not of scarcity, but of absolute

famine. There will be, I fear, spoliation. The spoliation will increase the distress. The distress will produce fresh spoliation. There is nothing to stop you. Your Constitution is all sail and no anchor. As I said before, when a society has entered on the downward progress, either civilization or liberty must perish. Either some Caesar or Napoleon will seize the reins of government with a strong hand, or your republic will be as fearfully plundered and laid waste by barbarians in the twentieth century as the Roman Empire was in the fifth: with this difference, that the Huns and Vandals who ravaged the Roman Empire came from without, and that your Huns and Vandals will have been engendered within your own country, by your own institutions.”<sup>1</sup>

In 1863, Professor Freeman, the author of the “Norman Conquest,” gave to one of his most learned historical works this title: “History of Federal Government from the Foundation of the Achaian League to the Disruption of the United States.”<sup>2</sup>

In this work he said that while it was dangerous to try to prophesy, he could not help thinking that the United States and the Confederate States would exchange ambassadors before the year 1869.

I think all thoughtful men must to a certain extent share the misgivings of Macaulay as to our future, especially in view of the growing disinclination of those who have the

<sup>1</sup> “Macaulay’s Life and Letters,” Trevelyan, 2d Ed., Vol. 2, Appendix.

<sup>2</sup> The book was advertised in the United States by Little & Brown with the following note: “Scarce. Owing to the indefinite postponement of the ‘Disruption of the United States,’ the author has only published Volume I. of this interesting book.”

largest property interests to take an active part in the government.

But up to the present time his predictions have not been fulfilled to any appreciable degree.

The Republic has grown from a few feeble scattered colonies, fringing the Atlantic coast, to nearly fifty strong and populous states, stretching across the continent; from a population of less than four millions to nearly seventy millions: from communities with practically no social or commercial intercourse, with little commerce upon the sea and smaller commerce upon the land, with no railways and no telegraph, with substantially no wealth, no money, and no credit, to a great and opulent nation bound together by a hundred and seventy-five thousand miles of railway, and nearly a million miles of telegraph and telephone lines; with exports and imports equal to those of France and Germany combined; with internal navigation and foreign commerce on the sea, the tonnage of which exceeds that of Great Britain: with an internal commerce greater than the entire foreign commerce of Great Britain, France, Germany, Russia, Austria, Hungary, and Belgium combined; with annual manufactured products of the value of eight billion seven hundred and fifty millions of dollars, or nearly twice those of Great Britain, and more than half as much as those of the whole of Europe: and with accumulated wealth of nearly seventy billions of dollars.

A high protective tariff has largely contributed to raise wages to a high standard and thus invited immigration to such an extent that within the last sixty years the country has received into its population more than fifteen million immigrants, or a million more persons than composed its entire population in 1840.



Its population, though probably still more evenly distributed than in older countries, has rapidly tended toward large commercial and manufacturing centres, until, from only six cities with a population of over eight thousand each and one of seventy-five thousand, it has come to have four hundred and forty-eight cities with a population of over eight thousand each, fourteen with a population of one hundred and twenty-five thousand to two hundred and fifty thousand each, three which have each more than a million, and two which have each more than a million and a half, of inhabitants.

Enormous wealth has been rapidly accumulated in a few hands and though on the whole wealth is still more equally distributed than in other countries, disparity of pecuniary and social condition has constantly increased. And yet life and property have remained as secure as in any country on which the sun shines.

How has this marvellous result been accomplished? What has been the conservative power which has thus reconciled diverse and conflicting interests and held the safeguards of life and property secure amid this surging sea of popular suffrage? I think the answer to this question is to be found in the words of the most accurate and philosophic foreign observer of our institutions, who, after a careful study of them in every aspect, wrote: —

“I cannot believe that a republic could subsist at the present time if the influence of lawyers in public business did not increase in proportion to the power of the people.”<sup>1</sup>

And in the statement of Mr. Justice Harlan, who, at the celebration of the centennial of the adoption of the Federal Constitution, said: —

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<sup>1</sup> De Tocqueville in 1835.



“If there be security for life, liberty, and property, it is because the lawyers of America have not been unmindful of their obligation as ministers of justice.”

I believe that few persons realize to what extent the Bar has participated in the government, and shaped the direction of public affairs in the United States. No complete statistics have been prepared showing the number of lawyers in proportion to the population, and their proportion as members of the legislative, executive, and judicial department of the federal and State governments.

I have therefore, within the limits of time and material at my command, sought to gather some information upon this subject.

Prior to the census of 1850, lawyers were classed with other learned professions in the classification of occupations, and it is now impossible to ascertain their number.

Since 1850 their number and proportion to the male population can be ascertained and I have taken the male population, as the most convenient and accurate basis of comparison, as the number of qualified voters in each State is not easily ascertained with accuracy.

In 1850, the male population of the United States was 11,837,660, of whom 23,939, or one in 494 were lawyers; in 1860, it was 16,085,204 of whom 33,193, or one in 484 were lawyers; in 1870 it was 19,493,565, of whom 40,736, or one in 479 were lawyers: and in 1880, it was 25,518,820, of whom 64,137, or one in 398 were lawyers.

In 1890, the male population was 32,067,880, but the census computations as to occupations have not been completed, and it is therefore impossible to give the number of lawyers as ascertained by the census of 1890. If it be assumed that the increase in the number from 1880 to 1890 was equal to

the increase in the number from 1870 to 1880, there were 87,538 lawyers in the United States, or one in 366 of the male population. But as the increase in the number from 1870 to 1880 was proportionately greater than the increase of the population during that period, this estimate may be too large. If, however, the number increased from 1880 to 1890 only in proportion to the increase in the population, there were in the United States in 1890, 80,572 lawyers, or one in 398 of the male population.

It appears, however, that the proportion of lawyers to the male population has constantly increased each decade from 1850 to 1880, from one in 494 in 1850 to one in 398 in 1880, and I know of no reason why the proportion did not continue to increase from 1880 to 1890. It is doubtless within bounds to say that at the present time at least one in every 400 of the male population of the United States is a member of the legal profession; and while a portion of them are doubtless engaged more or less in other pursuits, still they have all been trained to that accuracy of thought and conservatism of action which are the essential characteristics of the profession.

It is the influence of this large and constantly increasing body of cautious and conservative men upon state and federal government which we have to consider.

This influence is of course most apparent and direct in the judicial department of the government, and if it were felt there alone would be, perhaps, more important than any other in its effect upon the welfare of the State.

All the judges of the numerous federal courts,<sup>1</sup> and of the

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<sup>1</sup> The judges of the Supreme Court of the United States, of the Court of Claims, Court of Private Land Claims, and of the United States Circuit and District Courts number 261, and the number of United States Commissioners in the different circuits is 1955.

highest courts, and of most of the inferior courts in all the States are lawyers, and the influence of the Bar in their selection is so absolute that it is practically impossible for a lawyer to become and to remain a judge of any important court, state or federal, unless he commands the confidence and respect of the profession. Of this the recent signal failure of the most powerful political organization in the United States to elect its candidate for judge of the highest court of New York against the protest of the Bar of that State, is a striking illustration.

In nearly all the states the judges are elected by popular vote for more or less brief terms, but the influence of the Bar is so strong that it practically requires their re-election when competent, so that their tenure of office is now practically as secure where they are elected for a term of years as where they are appointed for life.

And not only does the Bar thus practically make the judiciary, but its opinions largely influence judicial decisions. As has been well said by a foreign observer, —

“The keen interest which the profession takes in the law secures an unusually large number of accurate and competent critics of the interpretation put upon the law by the judges. Such men form a tribunal, to whose approval the judges are sensitive, and all the more because, like the judges of England, but unlike those of Continental Europe, they have been themselves practising counsel.”<sup>1</sup>

The constant discussions of legal questions in our numerous law schools and legal publications, in which we are far in advance of England, have also much influence upon the courts in their treatment of questions before them.

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<sup>1</sup> Bryce's *American Commonwealth*, Vol. 1, page 259.

We have fifty-six law schools, with a membership of more than six thousand students, and these schools are to a great extent conducted by lawyers, who either have been or are in active practice.<sup>1</sup>

While this influence is not so apparent as that exercised by counsel in the examination and argument of cases in which they are directly employed, it is in its ultimate effect probably fully as important. No decision which the profession as a whole does not accept as sound can hold a permanent place in our law.

The effect upon the federal and state governments of this influence of the Bar in the selection and guidance of the judiciary is rendered of the highest importance by reason of the controlling part which the judiciary have in the government under our system of written constitutions. In no other country can courts by construction of constitutions control legislative and executive action. Elsewhere, judicial decisions as to constitutional questions may be nullified by legislation. Here it is not only the right, but the duty of the courts, under the Constitution, to hold the legislative and executive departments within the limitations of the fundamental law. And while this high power has always been exercised with great caution, it has often been interposed for the protection of the fundamental principles upon which the government rests, and upon the preservation of which its existence as a free government absolutely depends.

The people of every state have approved the exercise of this power by their judiciary, and the nation has approved its exercise by the Supreme Court of the United States, in many instances, in respect to state as well as federal legisla-

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<sup>1</sup> See Appendix I. for a list of the law schools of the United States with dates of opening and present membership.

tion. That court has never failed to hold acts of State Legislatures or of Congress void, which in its opinion were beyond their constitutional power to enact. It has thus held twenty acts of Congress and one hundred and eighty-two acts of State and Territorial Legislatures to be unconstitutional.<sup>1</sup>

Only four federal statutes were held unconstitutional during the seventy years from 1790 to 1860, while sixteen were held contrary to the Constitution during the thirty-three years from 1860 to 1893.

From 1790 to 1860, thirty-two state and territorial statutes were held unconstitutional, while from 1860 to 1894, one hundred and fifty were thus held to be void.

This increase in the number of statutes held unconstitutional might at first be thought to indicate either a tendency of the legislative department to exceed the limits of its constitutional power, or of the judicial department to more closely restrain legislative action. A closer examination of the statutes will, I think, show that it is due to other causes, one of which is undoubtedly the great increase in the number of statutes enacted.

Prior to 1860, laws were made for less than thirty million people, and to-day they are made for nearly seventy millions.

Another cause is doubtless to be found in the fact that with the growth of interstate commerce, and the decision of the Supreme Court of the United States that the power of Congress over that commerce is exclusive of the power of the states, many state statutes which were thought to be within the power of the states to enact have been found to be in conflict with the power of Congress to deal with interstate commerce, and therefore void.

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<sup>1</sup> See Appendix II. for a list of these decisions.

And beyond this, that great tribunal has, by its construction of the federal Constitution, largely created the present fundamental law of the government under which we live. That Constitution, as it exists to-day, with the construction that has been put upon it by the decisions of the Supreme Court, is practically as much the work of the Court which has construed it, as of the Convention which framed it.

A great constitutional lawyer has said that "the framers of our national Constitution were idealists." And it is true that this instrument, as well as the bills of rights and state constitutions, were practically only glittering generalities until they were made luminous verities by the steady support of the Bar and the decisions of the Bench.

The federal Constitution was valueless as the fundamental law of a nation, until, by the arguments of Webster and the decisions of Marshall, it was made in fact, as well as in name, the supreme law of the land.

To this supreme law, as construed and declared by our great national judicial tribunal, and supported by the constant conservative influence of the Bar, the people must look for the ultimate security of person and property.

The judiciary alone can hold the constant conflict of selfish interests, which is an essential element of the growth of society, within the just limitations of the fundamental law.

"Till jarring interests of themselves create  
The according music of a well tuned state."

But great as the influence of the Bar has been in the judicial department of the government, it has been equally effective, though less direct, in the legislative department.

Though the number of lawyers in the state legislatures has not, as a rule, been large, it has always been much greater than their proportion of the population would warrant.



I have not been able within the limits of time and material at my command, and it is probably not possible by any practicable research, to ascertain the number of lawyers who have been members of all the state legislatures and their proportion to the whole membership in each. I have been able, however, to ascertain this for all the New England States for periods varying from twenty-four to ninety-four years, and for all the states except one at the present time, with, I think, substantial accuracy.

In Maine, since 1870, the average membership of the Bar in both branches of the legislature has been one in ten of the total membership, while their proportion to the male population has been only one in four hundred and sixty-eight.

In Vermont the average membership since 1850 has been one in twelve, and the proportion to the population, one in three hundred and fifty-eight.

In Rhode Island the average has been one in twelve of the legislature since 1840, and one in six hundred and seventy-seven of the population.

In Connecticut the average membership since 1850 has been one in sixteen, and the proportion to the population, one in five hundred and fifty.

In Massachusetts since 1846, the proportion has been one in nine of the legislature, and one in four hundred and seventy-five of the population.

In New Hampshire the average membership from 1800 to 1840 was one in thirteen, and from 1840 to 1893, one in nineteen, while the proportion to the population from 1840 to 1890 was one in four hundred and forty-nine.

For ninety-three years at least one in sixteen of the entire membership of both branches of the New Hampshire Legislature have been lawyers.



If during these periods the Bar had been represented in the legislatures of these states only according to their proportion of the population there would have been in the legislature of Maine a lawyer once in three years, in the legislatures of Vermont, Connecticut, New Hampshire, and Massachusetts once in two years, and in that of Rhode Island once in six years.

The present membership of the Bar in the state legislatures and their proportion to the male population, so far as I have been able to ascertain it, is as follows:—

In Alabama, 1 in 12 of the membership of the legislature, and 1 in 780 of the population.

In Arizona, 1 in 6 of the legislature, and 1 in 416 of the population.

In Arkansas, 1 in 4 of the legislature, and 1 in 532 of the population.

In California, 1 in 4 of the legislature, and 1 in 273 of the population.

In Colorado, 1 in 6 of the legislature, and 1 in 160 of the population.

In Connecticut, 1 in 11 of the legislature, and 1 in 384 of the population.

In Delaware, 1 in 30 of the legislature, and 1 in 584 of the population.

In Florida, 1 in 5 of the legislature, and 1 in 446 of the population.

In Georgia, 1 in 3 of the legislature, and 1 in 533 of the population.

In Idaho, 1 in 7 of the legislature, and 1 in 332 of the population.

In Illinois, 1 in 4 of the legislature, and 1 in 394 of the population.

In Indiana, 1 in 4 of the legislature, and 1 in 348 of the population.

In Iowa, 1 in 4 of the legislature, and 1 in 325 of the population.

In Kansas, 1 in 7 of the legislature, and 1 in 360 of the population.

In Kentucky, 1 in 3 of the legislature, and 1 in 420 of the population.

In Louisiana, 1 in 6 of the legislature, and 1 in 566 of the population.

In Maine, 1 in 7 of the legislature, and 1 in 447 of the population.

In Maryland, 1 in 5 of the legislature, and 1 in 425 of the population.

In Massachusetts, 1 in 6 of the legislature, and 1 in 460 of the population.

In Michigan, 1 in 6 of the legislature, and 1 in 411 of the population.

In Minnesota, 1 in 6 of the legislature, and 1 in 463 of the population.

In Mississippi, 1 in 5 of the legislature, and 1 in 692 of the population.

In Missouri, 1 in 5 of the legislature, and 1 in 388 of the population.

In Montana, 1 in 12 of the legislature, and 1 in 366 of the population.

In Nebraska, 1 in 17 of the legislature, and 1 in 297 of the population.

In Nevada, 1 in 22 of the legislature, and 1 in 353 of the population.

In New Hampshire, 1 in 18 of the legislature, and 1 in 446 of the population.

In New Jersey, 1 in 5 of the legislature, and 1 in 360 of the population.

In New York, 1 in 4 of the legislature, and 1 in 265 of the population.

In North Carolina, 1 in 7 of the legislature, and 1 in 891 of the population.

In North Dakota, 1 in 7 of the legislature, and 1 in 274 of the population.

In Ohio, 1 in 4 of the legislature, and 1 in 360 of the population.

In Oregon, 1 in 5 of the legislature, and 1 in 332 of the population.

In Pennsylvania, 1 in 5 of the legislature, and 1 in 428 of the population.

In Rhode Island, 1 in 7 of the legislature, and 1 in 561 of the population.

In South Carolina, 1 in 5 of the legislature, and 1 in 799 of the population.

In South Dakota, 1 in 11 of the legislature, and 1 in 274 of the population.

In Tennessee, 1 in 4 of the legislature, and 1 in 511 of the population.

In Texas, 1 in 2 of the legislature, and 1 in 397 of the population.

In Vermont, 1 in 14 of the legislature, and 1 in 394 of the population.

In Virginia, 1 in 2 of the legislature, and 1 in 550 of the population.

In Washington, 1 in 7 of the legislature, and 1 in 407 of the population.

In West Virginia, 1 in 5 of the legislature, and 1 in 500 of the population.

In Wisconsin, 1 in 6 of the legislature, and 1 in 568 of the population.

In Wyoming, 1 in 12 of the legislature, and 1 in 416 of the population.

It thus appears that in the legislatures of all the states but one the profession has a membership excessively large in proportion to its number in the population of the state. There is no reason to doubt that this is the case in that state, or that it has always been the case in all the states.

The influence of the Bar was controlling in the formation of the Federal Government.

Twenty-five of the 56 signers of the Declaration of Independence, and 30 of the 55 members of the Convention which framed the Federal Constitution were lawyers.

In the first Congress of the United States, 10 of the 29 senators, and 17 of the 65 representatives were lawyers, and the proportion of lawyers to the total number of senators and representatives has increased in each Congress, almost without exception, until in the present Congress, 67 of the 84 senators, and 222 of the 362 representatives are lawyers.

The entire number of senators since 1787 has been 3,122, of whom 2,068 have been lawyers.

The entire number of representatives has been 11,889, of whom 5,832 have been lawyers.

The combined membership of both branches of the National Congress from the beginning has been 15,011, of whom 7,900 have been members of the Bar.

The lowest percentage of membership of lawyers in both branches of Congress was in the tenth Congress, when it was 16 per cent, and the highest was in the fiftieth Congress, when it was 71 per cent.

In the House the lowest percentage was in the tenth

Congress, when it was 12 per cent, and the highest was in the thirty-sixth Congress, when it was 69 per cent.

In the Senate the lowest percentage was in the thirteenth Congress, when it was 25 per cent, and the highest in the twenty-eighth Congress, when it was 91 per cent.

The average membership of lawyers in both branches of Congress from the beginning has been 53 per cent. In the House the average has been 49 per cent, and in the Senate 66.

The membership of lawyers in the Senate has been greater during the past twenty-five years than for any other equal period, and has averaged from 75 to 80 per cent of the entire membership.<sup>1</sup> I have ascertained the membership of lawyers in Congress from trustworthy sources of information and I am confident it is not over stated.

Of the 122 different persons who have represented New Hampshire in the United States House of Representatives since 1789, 69 have been lawyers; while of the 46 senators during the same period, 30 have been members of the Bar.

The various State Constitutional Conventions have been largely composed of lawyers. In the convention soon to convene in New York 133 out of the 175 members are of the legal profession.

But the influence of lawyers in the State Legislatures, and Constitutional Conventions and in Congress has always been much greater than their numbers alone would warrant. They have, as a rule, held the most important and influential positions, and have been to a large extent the presiding

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<sup>1</sup> See Appendix III. for tables showing percentage of lawyers in the membership of Senate and of House in each Congress, and their percentage of the male population since 1840.

officers who have appointed the committees and guided the deliberations of these bodies.

Twenty-eight of the 78 Presidents *pro tem.* of the United States Senate, and 36 of the 63 Speakers of the House of Representatives have been lawyers.

In New Hampshire, this has been the case to a very marked degree.

Of the 62 Speakers of the House in this state since 1791, 50 have been lawyers, and the Speaker's chair has been occupied by a lawyer for 85 of the 103 years.

Of the 35 clerks of the House since 1800, 20 have been lawyers, and during 51 of the 94 years the clerkship has been filled by a lawyer.

Of the 75 Presidents of the Senate since 1791, 34 have been lawyers, and the presidency has been filled by lawyers during 47 of the past 105 years.

Of the 45 clerks of the Senate since 1800, 36 have been lawyers, and the clerkship of the Senate has been filled by a lawyer during 79 of the past 108 years.

It is also worthy of remark that the Bar of New Hampshire, like that of other States, contributed largely from its members and students to the Union army. The Colonel, Lieut.-Colonel, and Major of the First Regiment were leading lawyers,<sup>1</sup> while every subsequent regiment numbered among its officers, or its ranks, lawyers and law students, who left their clients and their studies to follow the flag, and more than one-third of the commanding officers of its regiments who fell in battle were members of the Bar.<sup>2</sup>

The names of the members of the Bar of the State who

<sup>1</sup> Mason W. Tappan, Thomas J. Whipple, Aaron F. Stevens.

<sup>2</sup> Col. Louis Bell, Col. Albert Henderson, Col. Oliver Woodbury, Maj. George Everett, Col. Moses N. Collins, Col. Alex. Gardiner.

have thus held so many of its legislative and executive offices are classified in an appendix to these remarks, as I have thought they might be of permanent interest to your Association.<sup>1</sup>

Lawyers have been chairmen of the most important committees in the State Legislatures and in Congress, members almost exclusively of the judiciary committees, and of committees and commissions for the revision of the statutes, doubtless, besides, participating in the debates more than any others.

Legislative action is also influenced by arguments before committees by lawyers who appear as counsel for opposing interests, and who are usually of such learning and character that the information and suggestions given by them are of great value.

In addition to this, the current comment and opinion of the Bar have an influence upon legislative action in regard to all matters of general and permanent legislation similar to, though probably not as great as, that which they have upon the action of the judiciary. In questions of constitutional law this influence is usually controlling, which is doubtless the great reason why, among the multitude of legislative acts, there are so few which are contrary to the fundamental law.

In short, it is safe to say that there is but little, if any, permanent general state or federal legislation which is not practically shaped by lawyers, and no statute which the profession as a whole do not approve can hold a permanent place in the law.

The influence of the Bar in the executive department of the government has always been most important.

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<sup>1</sup> See Appendix IV.



The President and the state Governors necessarily have such large and important powers, not only in respect to the execution of the law, but in regard to legislation and in the appointment of other officers that it is of the highest importance these positions should be held by able and conservative men. They not only have the power to execute the law and to pardon offences against it,<sup>1</sup> but the right to call the Legislature together for action at any time they may deem expedient.

It is also, by the express provision of the federal Constitution and of most of the state constitutions, and by custom in all the states but one, I think, the duty of the executive to give information to the legislative department as to the condition of public affairs, and to recommend such legislation as he may deem the public interest to require.

This gives the Executive a most important influence in legislation, for such recommendations, being generally based upon more full information than it is practicable for the legislature to obtain, and being given in most cases from purely patriotic motives, justly receive careful consideration from the legislature and from the people.

The Executive has also, beyond this, the uncontrolled power, by the exercise of a qualified negative upon legislative action, popularly called "the Veto Power," to compel the legislative department to revise its action, and thus in the federal government and in substantially all the states, to require the legislature to act by a two-thirds vote of all the members of each branch. The frequency with which this high power is now exercised is well known, and the

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<sup>1</sup> The Governor of New York during the last year granted 18 pardons and 110 commutations of sentences, nineteen of which were to convicted murderers.

manner in which the Executive may use it, merely because his judgment as to the practical details of an act of legislation differs from that of the legislative department, has been recently illustrated in a striking manner by a presidential veto of a bill for the construction of a bridge in one of the most important lines of interstate commerce in the Union.<sup>1</sup>

The President and the state Governors have also most important powers of appointment to office, and though in the federal government and in some of the states this power is cautiously guarded by requiring the approval of the most important appointments by the Senate, or a Council, it is as a rule practically exercised with comparatively little check.

It is thus to the executive department of our federal and state governments that the constitutions necessarily confide the largest liberty of individual official action, and it is in this department that the Bar has always held a very important part.

Of the 24 Presidents of the United States, 19 have been lawyers. The presidential chair has been occupied by lawyers for 84 years of the 106 years since the adoption of the Constitution.

Of the 23 vice-presidents, 17 have been lawyers.

Of the 232 cabinet officers, 175 have been lawyers, without counting the 43 attorneys general who have, of course, all been lawyers.

If they are included, 218 of the 232 cabinet officers have been members of the Bar.

Of the 238 governors of the New England States, 119 of

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<sup>1</sup> President Cleveland's veto of the New York and New Jersey Bridge Bill.

the 231 whose occupations I have been able to ascertain, have been lawyers.

Of the 1,157 governors of all the states, 578 of the 978 whose occupations I have been able to ascertain, have been lawyers.

The following are illustrations of the extent to which the state Governors have been lawyers :—

In Alabama, 21 out of the 28 governors have been lawyers; in Georgia, 26 of the 36; in Illinois, 15 of the 21; in Iowa, 10 of the 17; in Kentucky, 19 of the 31; in North Carolina, 24 of the 40; in Pennsylvania, 13 of the 21; in Ohio, 27 of the 40; in New York, 25 of the 33; in Vermont, 28 of the 40; in Maine, 20 of the 35; in Connecticut, 23 of the 38; in Massachusetts, 21 of the 34; in Virginia, 24 of the 39.

But it is not in the legislature or from the executive chair or the bench that the bar exerts the most important influence upon the government. It is its influence upon the people, at the source of political power, which most shapes and directs public action, and has the most far-reaching effect upon the fortunes of the State.

The great conservative power in the State is the constant influence of the members of the profession upon the communities in which they live. They teach the countless clients whom they advise, and whose business affairs they more and more direct, the juries whom they address, the citizens with whom they mingle in all the relations of social and civil life, the orderly habits of thought, and the conservatism of action which are the safety of the Republic. Take this constant conservative influence out of our social, business, and political life, and where would the safeguards of constitutional liberty be found?

Men of business pursuits usually look only to that which they believe will best serve their purely personal purposes, and regard everything which stands in the way of what they desire only as obstacles to be surmounted or destroyed.

The scholar, uneducated by contact with actual life, strives for an ideal state, and seeks to guide political action within the limited lines of his individual thought and belief. The uneducated and ignorant see only the present evil, and strike blindly at that which seems to be most in the way of their momentary desires. They would all, with honest intention, but with limited vision and narrow purpose, often destroy the legal safeguards upon which the security of their persons and property absolutely depend. But the lawyer, educated and trained to a respect for the established rules of law, which is often almost superstitious, and with an undue desire to preserve that which is rather than to attain that which should be, tempers and moderates the action of all.

It is as true now as when De Tocqueville wrote, that the legal profession in the United States is "qualified by its powers, and even by its defects, to neutralize the vices which are inherent in popular government." He wrote:—

"The lawyers of the United States form a party which is but little feared and scarcely perceived, which has no badge peculiar to itself, which adapts itself with great flexibility to the exigencies of the time, and accommodates itself to all the movements of the social body. But this party extends over the whole community, and it penetrates into all classes of society. It acts upon the country imperceptibly, but it finally fashions it to suit its purposes."<sup>1</sup>

Lawyers, of all men, most appreciate that the primary purpose of a free government is to protect the individual

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<sup>1</sup> De Tocqueville's "Democracy in America," Vol. 1, page 284.

against the many, and that the steady maintenance of the fundamental principles of the common law, even though they at times serve to restrain liberty, is the only sure protection against a tyranny by the majority, which, unchecked, will ultimately destroy liberty itself.

The cautious conservatism of the Bar has been the subject of much flippant observation and shallow criticism, but it is by far the most valuable quality which the profession brings to the service of the State. It springs from devotion to individual rights under the law, and the great glory of the Bar has always been its constant courage in defence of these rights.

Maynard, with the weight of ninety years upon his snow-crowned head, leading the defence against the arbitrary prerogative of the Crown; John Adams, standing amid a storm of popular indignation in defence of hated foreign soldiers against illegal prosecution; Seward, speaking for the weak and friendless Freeman; and Dana, daring social ostracism and personal violence in defence of the fugitive slave, are only illustrations of how the Bar, unawed by power, unmoved by popular clamor, has always stood for personal liberty regulated by law.

It is often said that lawyers leave no monuments worthy of their intellectual power and labor; that while great soldiers link their names with battles by which states are created and states are saved; great statesmen found civil policies by which nations are guided and made great, and great architects and artists live in the masterpieces of architecture, sculpture, and painting, great lawyers create nothing which long outlasts their lives.

In a narrow sense this is true. The highest effort of the

lawyer does soon fade into tradition ; and even the greatest do seem to leave nothing which lives after them.

But in a broader sense this is not true. We labor upon that which outlasts the results of all other human effort. We build and preserve the Temple of Justice, and, to borrow the words of New Hampshire's most illustrious son : —

“Whoever labors on this edifice with usefulness and distinction, whoever clears its foundations, strengthens its pillars, adorns its entablatures, or contributes to raise its august dome still higher in the skies, connects himself in name and fame and character with that which is and must be as durable as the frame of human society.”

And this shall make the lawyer's labor immortal.





## APPENDIX I.

### LAW SCHOOLS OF THE UNITED STATES.

		Opened.	Mem- bership.
Albany Law School,	Albany, New York,	1851	41
Allen University Law Dept.,	Columbia, S. C.,	1883	11
Alabama University Law School,	University P. O.,		19
Baltimore University Law School,	Baltimore, Md., { Reopened,	1870 { 1889 }	80
Boston University Law Dept.,	Boston, Mass.,	1872	210
Buffalo Law School,	Buffalo, N. Y.,	1887	60
Central Tennessee College,	Nashville, Tenn.,	1875	8
Cincinnati College Law Dept.,	Cincinnati,	1833	166
Columbia College Law Dept.,	New York,	1858	625
Cornell University Law Dept.,	Ithaca, N. Y.,	1887	228
Chaddock College Law Dept.,	Quincy, Ill.,	1882	12
Columbian University Law Dept.,	Washington, D. C.,	1865	383
Cumberland Univ'sity Law Dept.,	Lebanon, Tenn.,	1842	71
Colorado University Law School,	Boulder, Col.,	1892	
City of New York University,	New York,	1858	342
De Pauw University Law Dept.,	Greencastle, Ind.,	1884	48
Dickinson School of Law,	Carlisle, Pa.,	1890	50
Emory College Law Dept.,	Oxford, Ga.,	1887	
Georgia University Law School,	Athens, Ga.,	1859	38
Georgetown Univ'sity Law Dept.,	Washington, D. C.,	1870	268
Harvard University Law Dept.,	Cambridge, Mass.,	1817	363
Hastings College of Law,	San Francisco, Cal.,	1878	140
Howard University Law Dept.,	Washington, D. C.,	1865	74
Indiana University Law Dept.,	Bloomington, Ind.,	1842	61
Iowa College of Law,	Des Moines, Iowa,	1867	37
Iowa State University Law Dept.,	Iowa City, Ia.,	1866	200
Illinois Wesleyan University Law College,		1874	44
Kansas University Law School,	Lawrence,	1878	79
Louisville University Law School,	Louisville, Ky.,	1846	40
Little Rock Univ'sity Law Dept.,	Little Rock, Ark.,	1890	30
McKendree College Law Dept.,	Lebanon, Ill.,	1889	26
Maryland University Law School,	Baltimore, Md.,	1825-35	160
Mercer University Law School,	Macon, Ga.,	1892	
Michigan University Law School,	Ann Arbor, Mich.,	1859	648
Minnesota University Law School,	Minneapolis,	1888	242
Missouri State University, Law Dept.,	Columbia,	1872	75
Missouri University Law School,	University P. O.	1881	21

		Opened.	Mem- bership.
North Carolina University Law Dept.,	Chapel Hill, {	1846-68 {	55
	{ Reopened,	1875 }	
Northwestern University Law School,	Chicago, Ill.,	1859	264
		1869	
Notre Dame University Law Dept.,	New Orleans, La., {	Reorgan- ized,	40-50
		1883 }	
National University Law Dept.,	Washington, D. C.,	1893	105
Ohio State University Law School,	Columbus, Ohio,	1891	67
Oregon University Law School,	Portland, Ore.,	1884	55
Pennsylvania University Law School,	Philadelphia,	1852	176
St. Louis Law School,	St. Louis, Mo.,	1867	81
South Carolina University Law Dept.,	Columbia,	1884	20
Tennessee University Law Dept.,	Knoxville,	1890	10
Texas University Law Dept.,	Austin, Tex.,	1883	105
Tulane University of Louisiana, Law Dept.,	New Orleans, La.,		49
Vanderbilt University, Law Dept.,	Nashville, Tenn.,	September, 1874	28
Virginia University Law Dept.,	University P. O., Va.,	1826	138
W. Virginia University Law Dept.,	Morgantown, W. Va.,	1878	26
Wisconsin University Law School,	Madison, Wis.	1868	170
Washington and Lee University, Law School.	Lexington, Va.,	1849	63
Willamette University College of Law,	Salem, Ore.,		5
Yale University, Law Dept.,	New Haven, Conn.,	1843	188

## APPENDIX II.

### Cases in which Statutes have been held to be Unconstitutional by the Supreme Court of the United States stated in order of time.

#### STATUTES OF THE UNITED STATES, 20.

1792.	1872.
Hayburn's Case, 2 Dallas, 409.	United States <i>v.</i> Railroad Company,
1794.	17 Wallace, 322.
United States <i>v.</i> Yale Todd, 13 Howard, 52 n.	1875.
1803.	United States <i>v.</i> Reese, 92 United States, 214.
Marbury <i>v.</i> Madison, 1 Cranch, 137.	1877.
1851.	United States <i>v.</i> Fox, 95 United States, 670.
United States <i>v.</i> Ferreira, 13 Howard, 40.	1879.
1864.	Trade Mark Cases, 100 United States, 82.
Gordon <i>v.</i> United States, 2 Wallace, 561.	Kilbourn <i>v.</i> Thompson, 103 United States, 168.
1866.	1882.
<i>Ex parte</i> Garland, 4 Wallace, 333.	United States <i>v.</i> Harris, 106 United States, 629.
1869.	1883.
Hepburn <i>v.</i> Griswold, 8 Wallace, 603.	Civil Rights Cases, 109 United States, 3.
1869.	1885.
United States <i>v.</i> DeWitt, 9 Wallace, 41.	Boyd <i>v.</i> United States, 116 United States, 616.
1869.	1887.
The Justices <i>v.</i> Murray, 9 Wallace, 274.	Callan <i>v.</i> Wilson, 127 United States, 540.
1870.	
Collector <i>v.</i> Day, 11 Wallace, 113.	
1871.	
United States <i>v.</i> Klein, 13 Wallace, 128.	

#### STATUTES OF THE STATES AND TERRITORIES.

Alabama, 7.	1860.
1859.	Howard <i>v.</i> Bugbee, 24 Howard, 461.
Sinnot <i>v.</i> Davenport, 22 Howard, 227.	1868.
Affirmed in Foster <i>v.</i> Davenport, 22 Howard, 244.	The Belfast, 7 Wallace, 624.

1870.  
 State Tonnage Tax Cases, 12 Wal-  
 lace, 204.  
 1872.  
 Morgan v. Parham, 16 Wallace, 471.  
 1873.  
 Horn v. Lockhart, 17 Wallace, 570.  
 1887.  
 Leloup v. Port of Mobile, 127 United  
 States, 640.

#### Arkansas, 4.

1850.  
 Woodruff v. Tapnall, 10 Howard, 190.  
 1853.  
 Curran v. Arkansas, 15 Howard, 304.  
 1866.  
 McGee v. Mathis, 4 Wallace, 143.  
 1871.  
 Osborn v. Nicholson, 13 Wallace, 654.

#### California, 7.

1854.  
 Hays v. Pacific Mail Steamship Com-  
 pany, 17 Howard, 596.  
 1860.  
 Almy v. California, 24 Howard, 169.  
 1871.  
 Low v. Austin, 13 Wallace, 29.  
 1875.  
 Chy Lung v. Freeman, 92 United  
 States, 275.  
 1885.  
 Yick Wo v. Hopkins, 118 United  
 States, 356.  
 1887.  
 California v. Central Pacific Railroad  
 Company, 127 United States, 1.  
 1889.  
 McCall v. California, 136 United States,  
 104.

#### Delaware, 1.

1880.  
 Neal v. Delaware, 103 United States,  
 370.

#### District of Columbia, 1.

1888.  
 Stoutenburgh v. Hennick, 129 United  
 States, 141.

#### Florida, 1.

1877.  
 Pensacola Telegraph Company v.  
 Western Union Telegraph Company,  
 96 United States, 1.

#### Georgia, 8.

1810.  
 Fletcher v. Peck, 6 Cranch, 87.  
 1832.  
 Worcester v. Georgia, 6 Peters, 515.  
 1871.  
 White v. Hart, 13 Wallace, 646.  
 1872.  
 Gunn v. Barry, 15 Wallace, 610.  
 1872.  
 Walker v. Whitehead, 16 Wallace, 314.  
 1875.  
 Central Railroad Banking Company v.  
 Georgia, 92 United States, 665.  
 Affirmed by Southwestern Railroad  
 Company v. Georgia, 92 United  
 States, 676.  
 1882.  
 Savannah v. Jesup, 106 United States,  
 563.  
 1885.  
 Spraigne v. Thompson, 118 United  
 States, 90.

#### Illinois, 6.

1843.  
 Bronson v. Kinzie, 1 Howard, 311.  
 1844.  
 McCracken v. Hayward, 2 Howard,  
 608.  
 1866.  
 Bradley v. People, 4 Wallace, 459.  
 1866.  
 Von Hoffman v. Quincy, 4 Wallace,  
 535.  
 1878.  
 University v. People, 99 United States,  
 309.  
 1886.  
 Wabash, St. Louis and Pacific Rail-  
 way Company v. Illinois, 118 United  
 States, 557.

**Indiana, 3.**

1845.  
*Gantley's Lessee v. Ewing*, 3 Howard, 707.  
 1881.  
*Evansville Bank v. Britton*, 105 United States, 322.  
 1886.  
*Western Union Telegraph Company v. Pendleton*, 122 United States, 347.

**Iowa, 4.**

1850.  
*Webster v. Reid*, 11 Howard, 437.  
 1886.  
*Barron v. Buruside*, 121 United States, 186.  
 1887.  
*Bowman v. Chicago and Northwestern Railway Company*, 125 United States, 465.  
 1889.  
*Leisy v. Hardin*, 135 United States, 100.

**Kansas, 3.**

1866.  
*The Kansas Indians*, 5 Wallace, 737.  
 1872.  
*Railway Company v. Prescott*, 16 Wallace, 603.  
 1874.  
*Loan Association v. Topeka*, 20 Wallace, 655.

**Kentucky, 4.**

1823.  
*Green v. Biddle*, 8 Wheaton, 1.  
 1882.  
*Bush v. Kentucky*, 107 United States, 110.  
 1885.  
*Louisville Gas Company v. Citizen's Gas Company*, 115 United States, 683.  
 1890.  
*Crutcher v. Kentucky*, 141 United States, 47.

**Louisiana, 19.**

1819.  
*McMillan v. McNeill*, 4 Wheaton, 209.  
 1867.  
*Steamship Company v. Portwardens*, 6 Wallace, 31.

1867.

*White v. Cannon*, 6 Wallace, 443.

1874.

*Cannon v. New Orleans*, 20 Wallace, 577.

1875.

*Commissioners v. North German Lloyd*, 92 United States, 259.

1875.

*Board of Liquidation v. McComb*, 92 United States, 531.

1876.

*Foster v. Master and Wardens of the Port of New Orleans*, 94 United States, 246.

1877.

*Hall v. DeCuir*, 95 United States, 485.

1880.

*Wolff v. New Orleans*, 103 United States, 358.

1881.

*Louisiana v. Pillsbury*, 105 United States, 278.

1881.

*Asylum v. New Orleans*, 105 United States, 362.

1882.

*Louisiana v. Jumel*, 107 United States, 711.

1883.

*Nelson v. St. Martin's Parish*, 111 United States, 716.

1884.

*Moran v. New Orleans*, 112 United States, 69.

1885.

*New Orleans Gas Light Company v. Louisiana Light Company*, 115 United States, 650.

1885.

*New Orleans Water Works Company v. Rivers*, 115 United States, 674.

1885.

*Fisk v. Jefferson Police Jury*, 116 United States, 131.

1886.

*New Orleans v. Houston*, 119 United States, 265.

1886.  
*St. Tammany Water Works v. New Orleans Water Works*, 120 United States, 64.  
*Affirming New Orleans Water Works v. Rivers*, 115 United States, 674.

### Maine, 1.

1864.  
*Hawthorne v. Calef*, 2 Wallace, 10.

### Maryland, 9.

1819.  
*McCulloch v. Maryland*, 4 Wheaton, 316.  
 1827.  
*Brown v. Maryland*, 12 Wheaton, 419.  
 1832.  
*Boyle v. Zacharie*, 6 Peters, 348.  
 1845.  
*Gordon v. Appeal Tax Court*, 3 Howard, 133.  
 1847.  
*Cook v. Moffat*, 5 Howard, 295.  
 1851.  
*Achison v. Huddleson*, 12 Howard, 293.  
 1870.  
*Ward v. Maryland*, 12 Wallace, 418.  
 1879.  
*Guy v. Baltimore*, 100 United States, 434.  
 1886.  
*Corson v. Maryland*, 120 United States, 502.

### Massachusetts, 2.

1849.  
*Norris v. Boston*, 7 Howard, 283.  
 1887.  
*Western Union Telegraph Company v. Massachusetts*, 125 United States, 530.

### Michigan, 2.

1885.  
*Walling v. Michigan*, 116 United States, 446.  
 1886.  
*Fargo v. Michigan*, 121 United States, 230.

### Minnesota, 3.

1857.  
*Irvine v. Marshall*, 20 Howard, 558.

1889.  
*Chicago, Milwaukee & St. Paul Railway Company v. Minnesota*, 134 United States, 418.

1889.  
*Minnesota v. Barber*, 136 United States, 314.

### Mississippi, 1.

1848.  
*Planters' Bank v. Sharp*, 6 Howard, 301.

### Missouri, 11.

1830.  
*Craig v. Missouri*, 4 Peters, 410.  
*Affirmed in Byrne v. Missouri*, 3 Peters, 40.  
 1839.  
*Bagnell v. Broderick*, 13 Peters, 436.  
 1866.  
*Cunimings v. Missouri*, 4 Wallace, 277.  
 1869.  
*Home of the Friendless v. Rouse*, 8 Wallace, 430.  
 1870.  
*St. Louis v. Ferry Company*, 11 Wallace, 423.  
 1873.  
*Pacific Railroad Company v. Maguire*, 20 Wallace, 36.  
 1875.  
*Welton v. Missouri*, 91 United States, 275.  
 1877.  
*Railroad Company v. Husen*, 95 United States, 465.  
 1882.  
*Kring v. Missouri*, 107 United States, 221.  
 1884.  
*Cole v. LaGrange*, 113 United States, 1.  
 1886.  
*Seibert v. Lewis*, 122 United States, 284.

### Montana, 1.

1870.  
*Dunphy v. Kleinsmith*, 11 Wallace, 610.

### Nevada, 1.

1867.  
*Crandall v. Nevada*, 6 Wallace, 35.

**New Hampshire, 1.**

1819.

Trustees of Dartmouth College *v.*  
Woodward, 4 Wheaton, 518.

**New Jersey, 2.**

1812.

New Jersey *v.* Wilson, 7 Cranch, 164.

1877.

New Jersey *v.* Yard, 95 United States,  
104.

**New York, 16.**

1819.

Sturges *v.* Crowninshield, 4 Wheaton,  
122.

1824.

Gibbons *v.* Ogden, 9 Wheaton, 1.

1827.

Ogden *v.* Saunders, 12 Wheaton, 213.

1849.

Smith *c.* Turner (The Passenger  
Cases), 7 Howard, 283.

1862.

Bank of Commerce *v.* New York City,  
2 Black, 620.

1864.

Bank Tax Case, 2 Wallace, 200.

1865.

The Binghamton Bridge, 3 Wallace,  
51.

1865.

Van Allen *v.* The Assessors, 3 Wal-  
lace, 573.

1866.

New York Indians, 5 Wallace, 761.

1868.

The Banks *v.* The Mayor, 7 Wallace, 16.  
Affirmed in Banks *v.* Supervisors, 7  
Wallace, 26.

1875.

Henderson *v.* New York, 92 United  
States, 259.

1876.

Inman Steamship Company *v.* Tinker,  
94 United States, 238.

1879.

People *v.* Weaver, 100 United States,  
539.

1881.

Supervisors *v.* Stanley, 105 United  
States, 305.

1881.

Hills *v.* Exchange Bank, 105 United  
States, 319.

1882.

People *v.* Compagnie Générale Trans-  
atlantique, 107 United States, 59.

**North Carolina, 2.**

1871.

Wilmington Railroad *v.* Reid, 13 Wal-  
lace, 261.

1877.

Edwards *v.* Kearzey, 96 United States,  
595.

**Ohio, 9.**

1824.

Osborn *v.* Bank of the United States,  
9 Wheaton, 738.

1845.

Neil *v.* Ohio, 3 Howard, 720.

1853.

State Bank of Ohio *v.* Knoop, 16 How-  
ard, 369.

1855.

Dodge *v.* Woolsey, 18 Howard, 331.

1861.

Franklin Branch Bank *v.* State of  
Ohio, 1 Black, 474.

1862.

Wright *v.* Sill, 2 Black, 544.

1879.

Pelton *v.* National Bank, 101 United  
States, 143.

1887.

Whitbeck *v.* Mercantile Bank, 127  
United States, 193.

1887.

Ratterman *v.* Western Union Tele-  
graph Company, 127 United States,  
411.

**Oregon, 2.**

1890.

Pennoyer *v.* McConaughy, 140 United  
States, 1.

1890.

Scotland County Court *v.* United States  
*ex rel.* Hill, 140 United States, 41.

**Pennsylvania, 13.**

1809.

United States *v.* Peters, 5 Cranch, 115.



1821.  
Farmers and Mechanics Bank *v.*  
Smith, 6 Wheaton, 131.

1842.  
Dobbins *v.* Erie County, 16 Peters, 435.

1842.  
Prigg *v.* Pennsylvania, 16 Peters, 539.

1845.  
Searight *v.* Stokes, 3 Howard, 151.

1868.  
Railroad Company *v.* Jackson, 7 Wal-  
lace, 262.

1872.  
State Freight Tax, 15 Wallace, 232.

1872.  
State Tax on Foreign-held Bonds, 15  
Wallace, 300.

1878.  
Cook *v.* Pennsylvania, 97 United  
States, 566.

1884.  
Boyer *v.* Boyer, 113 United States, 689.

1884.  
Gloucester Ferry Company *v.* Pennsyl-  
vania, 114 United States, 196.

1886.  
Philadelphia and Southern Steamship  
Company *v.* Pennsylvania, 122  
United States, 326.

1889.  
Norfolk and Western Railroad Com-  
pany *v.* Pennsylvania, 136 United  
States, 114.

#### South Carolina, 4.

1829.  
Weston *v.* Charleston, 2 Peters, 449.

1872.  
Humphrey *v.* Pegues, 16 Wallace, 244.

1873.  
Barings *v.* Dabney, 19 Wallace, 1.

1877.  
Murray *v.* Charleston, 96 United  
States, 432.

#### Tennessee, 8.

1868.  
Furman *v.* Nichol, 8 Wallace, 44.

1877.  
Farrington *v.* Tennessee, 95 United  
States, 679.

1877.  
Memphis *v.* United States, 97 United  
States, 293.

1878.  
Keith *v.* Clark, 97 United States, 454.

1883.  
Stevens *v.* Griffith, 111 United States,  
48.

1885.  
Pickard *v.* Pullman Southern Car  
Company, 117 United States, 34.  
Affirmed in Tennessee *v.* Pullman  
Southern Car Company, 117 United  
States, 51.

1885.  
Van Brocklin *v.* Tennessee, 117 United  
States, 151.

1886.  
Robbins *v.* Shelby County Taxing Dis-  
trict, 120 United States, 489.

#### Texas, 5.

1868.  
Texas *v.* White, 7 Wallace, 700.

1873.  
Peete *v.* Morgan, 19 Wallace, 581.

1880.  
Tiernan *v.* Rinker, 102 United States,  
123.

1881.  
Telegraph Company *v.* Texas, 105  
United States, 460.

1888.  
Asher *v.* Texas, 128 United States, 129.

#### Utah, 1.

1874.  
Ferris *v.* Higley, 20 Wallace, 375.

#### Vermont, 1.

1823.  
Society for the Propagation of the  
Gospel *v.* New Haven, 8 Wheaton,  
464.

#### Virginia, 13.

1815.  
Terrett *v.* Taylor, 9 Cranch, 43.

1851.  
*Pennsylvania v. Wheeling Bridge Company*, 13 Howard, 518.

1870.  
*Thomas v. City of Richmond*, 12 Wallace, 349.

1877.  
*Williams v. Bruffy*, 96 United States, 176.

1879.  
*Hauenstein v. Lynham*, 100 United States, 483.

1880.  
*Hartman v. Greenhow*, 102 United States, 672.

1880.  
*Webber v. Virginia*, 103 United States, 344.

1882.  
*Antoni v. Greenhow*, 107 United States, 769.

1884  
*Virginia Coupon Cases*, 114 United States, 269.

1885.  
*Effinger v. Kenney*, 115 United States, 569.

1885.  
*Royall v. Virginia*, 116 United States, 572.

1890.  
*Brimmer v. Rebman*, 138 United States, 78.

1890.  
*Voight v. Wright*, 141 United States, 62.

### West Virginia, 3.

1872.  
*Pierce v. Carskadon*, 16 Wallace, 234.

1879.  
*Strauder v. West Virginia*, 100 United States, 303.

1882.  
*Parkersburg v. Brown*, 106 United States, 487.

### Wisconsin, 3.

1874.  
*Insurance Company v. Morse*, 20 Wallace, 445.

1876.  
*Affirmed by Doyle v. Continental Insurance Company*, 94 United States, 535.

1881.  
*Koshkonong v. Burton*, 104 United States, 668.

## FOREGOING DECISIONS BY DECADES.

### Statutes of the United States.

1790-1800 . . . . .	2	1840-1850 . . . . .	0
1800-1810 . . . . .	1	1850-1860 . . . . .	1
1810-1820 . . . . .	0	1860-1870 . . . . .	5
1820-1830 . . . . .	0	1870-1880 . . . . .	6
1830-1840 . . . . .	0	1880-1893 . . . . .	5
			<hr/>
			20

### Statutes of the States and Territories.

1790-1800 . . . . .	0	1850-1860 . . . . .	10
1800-1810 . . . . .	1	1860-1870 . . . . .	24
1810-1820 . . . . .	7	1870-1880 . . . . .	51
1820-1830 . . . . .	7	1880-1890 . . . . .	60
1830-1840 . . . . .	5	1890-1894 . . . . .	5
1840-1850 . . . . .	12		<hr/>
			182



## APPENDIX III.

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The following table shows the membership of United States Senate and of House of Representatives in each Congress from 1789 to 1894, with the number of lawyers in each Senate and the number in each House, and their percentage of the whole number of each and of the whole number of both Senate and House, and also the percentage of lawyers in the male population of the United States during the time of each Congress since 1850.

### First Congress, 1789-1791.

<i>Senate.</i>	<i>House.</i>	<i>Senate and House.</i>
Senators . . . . 29	Representatives . . 65	Members . . . . 94
Lawyers . . . . 10	Lawyers . . . . 17	Lawyers . . . . 27
Lawyers 34 per cent. of Senate.		
Lawyers 26 per cent. of House.		
Lawyers 29 per cent. of Senate and House.		

### Second Congress, 1791-1793.

<i>Senate.</i>	<i>House.</i>	<i>Senate and House.</i>
Senators . . . . 31	Representatives . . 72	Members . . . . 103
Lawyers . . . . 11	Lawyers . . . . 21	Lawyers . . . . 32
Lawyers 35 per cent. of Senate.		
Lawyers 29 per cent. of House.		
Lawyers 32 per cent. of Senate and House.		

### Third Congress, 1793-1795.

<i>Senate.</i>	<i>House.</i>	<i>Senate and House.</i>
Senators . . . . 32	Representatives . . 109	Members . . . . 141
Lawyers . . . . 13	Lawyers . . . . 13	Lawyers . . . . 40
Lawyers 41 per cent. of Senate.		
Lawyers 25 per cent. of House.		
Lawyers 28 per cent. of Senate and House.		

**Fourth Congress, 1795-1797.**

<i>Senate.</i>	<i>House.</i>	<i>Senate and House.</i>
Senators . . . . 43	Representatives . 114	Members . . . . 157
Lawyers . . . . 23	Lawyers . . . . 26	Lawyers . . . . 49
Lawyers 53 per cent. of Senate.		
Lawyers 23 per cent. of House.		
Lawyers 31 per cent. of Senate and House.		

**Fifth Congress, 1797-1799.**

<i>Senate.</i>	<i>House.</i>	<i>Senate and House.</i>
Senators . . . . 45	Representatives . 116	Members . . . . 161
Lawyers . . . . 18	Lawyers . . . . 27	Lawyers . . . . 45
Lawyers 40 per cent. of Senate.		
Lawyers 23 per cent. of House.		
Lawyers 28 per cent. of Senate and House.		

**Sixth Congress, 1799-1801.**

<i>Senate.</i>	<i>House.</i>	<i>Senate and House.</i>
Senators . . . . 38	Representatives . 112	Members . . . . 150
Lawyers . . . . 24	Lawyers . . . . 36	Lawyers . . . . 60
Lawyers 63 per cent. of Senate.		
Lawyers 32 per cent. of House.		
Lawyers 40 per cent. of Senate and House.		

**Seventh Congress, 1801-1803.**

<i>Senate.</i>	<i>House.</i>	<i>Senate and House.</i>
Senators . . . . 38	Representatives . 112	Members . . . . 150
Lawyers . . . . 19	Lawyers . . . . 23	Lawyers . . . . 42
Lawyers 50 per cent. of Senate.		
Lawyers 21 per cent. of House.		
Lawyers 28 per cent. of Senate and House.		

**Eighth Congress, 1803-1805.**

<i>Senate.</i>	<i>House.</i>	<i>Senate and House.</i>
Senators . . . . 43	Representatives . 148	Members . . . . 191
Lawyers . . . . 17	Lawyers . . . . 23	Lawyers . . . . 40
Lawyers 40 per cent. of Senate.		
Lawyers 16 per cent. of House.		
Lawyers 21 per cent. of Senate and House.		

**Ninth Congress, 1805-1807.**

<i>Senate.</i>	<i>House.</i>	<i>Senate and House.</i>
Senators . . . . 37	Representatives . 147	Members . . . . 184
Lawyers . . . . 13	Lawyers . . . . 19	Lawyers . . . . 32
Lawyers 35 per cent. of Senate.		
Lawyers 13 per cent. of House.		
Lawyers 17 per cent. of Senate and House.		

**Tenth Congress, 1807-1809.**

<i>Senate.</i>	<i>House.</i>	<i>Senate and House.</i>
Senators . . . . 38	Representatives . 146	Members . . . . 184
Lawyers . . . . 13	Lawyers . . . . 17	Lawyers . . . . 30
Lawyers 34 per cent. of Senate.		
Lawyers 12 per cent. of House.		
Lawyers 16 per cent. of Senate and House.		

**Eleventh Congress, 1809-1811.**

<i>Senate.</i>	<i>House.</i>	<i>Senate and House.</i>
Senators . . . . 45	Representatives . 156	Members . . . . 201
Lawyers . . . . 15	Lawyers . . . . 28	Lawyers . . . . 43
Lawyers 33 per cent. of Senate.		
Lawyers 18 per cent. of House.		
Lawyers 21 per cent. of Senate and House.		

**Twelfth Congress, 1811-1813.**

<i>Senate.</i>	<i>House.</i>	<i>Senate and House.</i>
Senators . . . . 37	Representatives . 146	Members . . . . 183
Lawyers . . . . 12	Lawyers . . . . 32	Lawyers . . . . 44
Lawyers 32 per cent. of Senate.		
Lawyers 22 per cent. of House.		
Lawyers 24 per cent. of Senate and House.		

**Thirteenth Congress, 1813-1815.**

<i>Senate.</i>	<i>House.</i>	<i>Senate and House.</i>
Senators . . . . 46	Representatives . 197	Members . . . . 243
Lawyers . . . . 12	Lawyers . . . . 53	Lawyers . . . . 53
Lawyers 25 per cent. of Senate.		
Lawyers 27 per cent. of House.		
Lawyers 27 per cent. of Senate and House.		

**Fourteenth Congress, 1815-1817.**

<i>Senate.</i>	<i>House.</i>	<i>Senate and House.</i>
Senators . . . . 43	Representatives . 206	Members . . . . 249
Lawyers . . . . 18	Lawyers . . . . 57	Lawyers . . . . 75
Lawyers 42 per cent. of Senate.		
Lawyers 28 per cent. of House.		
Lawyers 30 per cent. of Senate and House.		

**Fifteenth Congress, 1817-1819.**

<i>Senate.</i>	<i>House.</i>	<i>Senate and House.</i>
Senators . . . . 46	Representatives . 198	Members . . . . 244
Lawyers . . . . 57	Lawyers . . . . 65	Lawyers . . . . 90
Lawyers 54 per cent. of Senate.		
Lawyers 33 per cent. of House.		
Lawyers 37 per cent. of Senate and House.		

**Sixteenth Congress, 1819-1821.**

<i>Senate.</i>	<i>House.</i>	<i>Senate and House.</i>
Senators . . . . 51	Representatives . 199	Members . . . . 250
Lawyers . . . . 22	Lawyers . . . . 58	Lawyers . . . . 80
Lawyers 43 per cent. of Senate.		
Lawyers 29 per cent. of House.		
Lawyers 32 per cent. of Senate and House.		

**Seventeenth Congress, 1821-1823.**

<i>Senate.</i>	<i>House.</i>	<i>Senate and House.</i>
Senators . . . . 52	Representatives . 205	Members . . . . 257
Lawyers . . . . 22	Lawyers . . . . 52	Lawyers . . . . 74
Lawyers 42 per cent. of Senate.		
Lawyers 25 per cent. of House.		
Lawyers 29 per cent. of Senate and House.		

**Eighteenth Congress, 1823-1825.**

<i>Senate.</i>	<i>House.</i>	<i>Senate and House.</i>
Senators . . . . 53	Representatives . 224	Members . . . . 277
Lawyers . . . . 28	Lawyers . . . . 66	Lawyers . . . . 94
Lawyers 53 per cent. of Senate.		
Lawyers 29 per cent. of House.		
Lawyers 34 per cent. of Senate and House.		



## Nineteenth Congress, 1825-1827.

<i>Senate.</i>	<i>House.</i>	<i>Senate and House.</i>
Senators . . . . 62	Representatives . 228	Members . . . . 290
Lawyers . . . . 36	Lawyers . . . . 77	Lawyers . . . . 113
Lawyers 58 per cent. of Senate.		
Lawyers 34 per cent. of House.		
Lawyers 39 per cent. of Senate and House.		

## Twentieth Congress, 1827-1829.

<i>Senate.</i>	<i>House.</i>	<i>Senate and House.</i>
Senators . . . . 53	Representatives . 220	Members . . . . 273
Lawyers . . . . 39	Lawyers . . . . 83	Lawyers . . . . 122
Lawyers 74 per cent. of Senate.		
Lawyers 38 per cent. of House.		
Lawyers 45 per cent. of Senate and House.		

## Twenty-First Congress, 1829-1831.

<i>Senate.</i>	<i>House.</i>	<i>Senate and House.</i>
Senators . . . . 55	Representatives . 224	Members . . . . 279
Lawyers . . . . 45	Lawyers . . . . 87	Lawyers . . . . 132
Lawyers 83 per cent. of Senate.		
Lawyers 39 per cent. of House.		
Lawyers 47 per cent. of Senate and House.		

## Twenty-Second Congress, 1831-1833.

<i>Senate.</i>	<i>House.</i>	<i>Senate and House.</i>
Senators . . . . 53	Representatives . 220	Members . . . . 273
Lawyers . . . . 40	Lawyers . . . . 97	Lawyers . . . . 137
Lawyers 75 per cent. of Senate.		
Lawyers 44 per cent. of House.		
Lawyers 50 per cent. of Senate and House.		

## Twenty-Third Congress, 1833-1835.

<i>Senate.</i>	<i>House.</i>	<i>Senate and House.</i>
Senators . . . . 53	Representatives . 259	Members . . . . 312
Lawyers . . . . 39	Lawyers . . . . 105	Lawyers . . . . 144
Lawyers 74 per cent. of Senate.		
Lawyers 41 per cent. of House.		
Lawyers 46 per cent. of Senate and House.		

**Twenty-Fourth Congress, 1835-1837.**

<i>Senate.</i>	<i>House.</i>	<i>Senate and House.</i>
Senators . . . . 62	Representatives . 257	Members . . . . 319
Lawyers . . . . 42	Lawyers . . . . 105	Lawyers . . . . 147
Lawyers 68 per cent. of Senate.		
Lawyers 41 per cent. of House.		
Lawyers 46 per cent. of Senate and House.		

**Twenty-Fifth Congress, 1837-1839.**

<i>Senate.</i>	<i>House.</i>	<i>Senate and House.</i>
Senators . . . . 58	Representatives . 260	Members . . . . 318
Lawyers . . . . 38	Lawyers . . . . 109	Lawyers . . . . 147
Lawyers 66 per cent. of Senate.		
Lawyers 42 per cent. of House.		
Lawyers 46 per cent. of Senate and House.		

**Twenty-Sixth Congress, 1839-1841.**

<i>Senate.</i>	<i>House.</i>	<i>Senate and House.</i>
Senators . . . . 60	Representatives . 255	Members . . . . 315
Lawyers . . . . 45	Lawyers . . . . 122	Lawyers . . . . 167
Lawyers 75 per cent. of Senate.		
Lawyers 48 per cent. of House.		
Lawyers 53 per cent. of Senate and House.		

**Twenty-Seventh Congress, 1841-1843.**

<i>Senate.</i>	<i>House.</i>	<i>Senate and House.</i>
Senators . . . . 59	Representatives . 258	Members . . . . 317
Lawyers . . . . 50	Lawyers . . . . 124	Lawyers . . . . 174
Lawyers 85 per cent. of Senate.		
Lawyers 48 per cent. of House.		
Lawyers 55 per cent. of Senate and House.		

**Twenty-Eighth Congress, 1843-1845.**

<i>Senate.</i>	<i>House.</i>	<i>Senate and House.</i>
Senators . . . . 58	Representatives . 237	Members . . . . 295
Lawyers . . . . 53	Lawyers . . . . 103	Lawyers . . . . 158
Lawyers 91 per cent. of Senate.		
Lawyers 43 per cent. of House.		
Lawyers 54 per cent. of Senate and House.		

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